

233373

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB DOCKET NO. AB-1071

STEWARTSTOWN RAILROAD COMPANY
ADVERSE ABANDONMENT
IN YORK COUNTY, PENNSYLVANIA

ENTERED
Office of Proceedings
NOV 20 2012
Part of
Public Record

PETITION TO TOLL TIME TO FILE AN OFA

1. James Riffin ("Riffin"), pursuant to 49 CFR 1152.27(c)(1)(i)(C), petitions the Surface Transportation Board ("STB" or "Board") to Toll the time period within which Riffin (and no other entity) must file his Offer of Financial Assistance ("OFA") in the above entitled proceeding, and in support thereof states:

2. Riffin is a financially responsible person. Riffin has, or within a reasonable time will have, the financial resources to fulfill all of his proposed contractual obligations.

3. On **November 16, 2012**, the STB rendered a decision in the above entitled proceeding, which decision (A) Granted the Application of the Estate of George M. Hart for Adverse Abandonment of the Stewartstown Railroad's ("SRC") Line of Railroad in York County, PA. ("Line") and (B) ordered that OFAs to purchase the Line must be filed **no later than November 26, 2012**.

4. Pursuant to 49 U.S.C. § 10904 and 49 CFR 1152.27 (a), on **January 17, 2012**, Riffin requested that SRC provide Riffin and the Board with the information specified in 49 CFR 1152.27 (a), and specifically, the following information:

A. SRC's estimate of the net liquidation value of the line with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in the line, and removal cost estimates, including the cost of transporting removed materials to a point of sale, the cost of removing cross ties, and any Sediment Control Prevention Plan costs.

B. Deed references to all parcels SRC contends it owns in fee simple.

C. SRC's most recent reports on the physical condition of that part of the Line involved in the proposed abandonment.

5. To date, the SRC **has not** provided Riffin with the above mentioned information.

6. Since the STB ordered the SRC to "(3) consult with the USFWS prior to commencement of salvage activities to discuss the implementation and documentation of any field surveys required to assess potential impacts to the bog turtle, and to identify any appropriate mitigation measures that may be warranted," Riffin would also ask that the STB **order** the SRC to provide Riffin with an estimate of the cost of complying with this STB requirement. This cost estimate is highly relevant to the Net Liquidation Value ("NLV") of the Line, since the NLV of a line is the salvage value of the track infrastructure **less** the cost of removing the track infrastructure and **less** the cost of transporting the track infrastructure to the point of sale or point of storage. The cost of the Bog Turtle study would constitute an additional "removal cost," which removal cost must be factored into the NLV of the Line.

7. Likewise, since (I) in *Norfolk Southern Railway Company – Abandonment Exemption – In Marietta, Lancaster County, PA*, AB 290 (Sub-No. 328X), Served January 31, 2012, and in *Consolidated Rail Corporation – Abandonment Exemption – In Philadelphia, PA*, AB 167 (Sub. No. 1191X), Served March 2, 2012, the STB acknowledged that (A) Pennsylvania considers the removal of track infrastructure to be an 'earth disturbing' activity, and as such is subject to Pennsylvania's Sediment Control regulations, (B) the removal of a bridge subjects the activity to the National Pollutant Discharge Elimination Systems (NPDES) permitting process, if the activity will disturb more than 5,000 sq. feet of earth, and (C) the removal of track infrastructure located in a floodplain requires obtaining a PA Department of Environmental Protection Water Obstruction and Encroachment permit, and since (II) the Line is located in several floodplains, has a number of bridges, and involves more than one acre. Riffin would

further ask that the STB **order** the SRC to provide to the STB and to Riffin an estimate of the cost of complying with Pennsylvania's regulations, were the track infrastructure to be removed. This cost estimate is highly relevant to the Net Liquidation Value ("NLV") of the Line, since the NLV of a line is the salvage value of the track infrastructure **less** the cost of removing the track infrastructure and **less** the cost of transporting the track infrastructure to the point of sale or point of storage. The cost of complying with Pennsylvania's regulations would constitute an additional "removal cost," which removal cost must be factored into the NLV of the Line.

8. Riffin proposes to offer to purchase the following portions of the Stewartstown Railroad. Since Riffin proposes to purchase discrete portions of the Stewartstown Railroad. Riffin would ask that the Stewartstown Railroad provide the above noted information (in ¶¶ 4, 6, 7) for each portion noted below.

- A. That portion of the Line that lies between MP 0.0 in New Freedom, PA. to a cut point near MP 1.9. said cut point to be 1,500 feet east of the east side of the intersection of the Susquehanna Trail and the Line, including the tracks adjacent to the Line, which tracks total about 1,860 linear feet.
- B. The small (0.289 acre +/-) parcel identified as Lot Two on a plat prepared by Shaw Surveying, Inc. on July 16, 1997, and the easement interest retained by the Stewartstown Railroad with regard to Parcel One of the same plat, being the land conveyed to the Stewartstown Railroad by a deed dated November 29, 1892. and recorded in the Land Recorder's Office of York County, PA. in Liber 17-S, folio 634. saving and excepting therefrom the December 9, 1997 conveyance from the Stewartstown Railroad to Larry Lamotte, recorded in the Land Recorder's Office of York County in Liber 1309, folio 555, but including the easement retained in the Lamotte deed.
- C. That portion of the Line that lies between the cut point located 1,500 feet east of the east side of the intersection of the Susquehanna Trail and the Line, and a cut point located at MP 3.2.
- D. That portion of the Line that lies between MP 3.2 and MP 5.7.

E. That portion of the Line that lies between MP 5.7 and the end of the Line, including any easements located at the end of the Line, and the trackage located on those easement(s). Excluding the Stewartstown Railroad Station and the land that it sits on, located in Stewartstown, PA; Excluding the structure the Stewartstown Railroad houses its locomotive(s) in, in Stewartstown, PA.

F. If that portion identified in paragraph A above is purchased, then the land and the structure on the land located in Shrewsbury, PA, which lies adjacent to, and on the North side of the Line, on the east side of the Susquehanna Trail, which structure formally was used as a railroad station.

G. If the entire Line is purchased, then the land and the building used to house the Stewartstown Railroad's locomotives(s).

9. Pursuant to the 6th Circuit's decision in *Railroad Ventures, Inc. v. Surface Transp. Bd.*, 299 F.3d 523 at 552 (6th Circuit 2002), where the 6th Circuit held that "a Qualified OFA purchaser is entitled to determine how much of the line it wishes to acquire," Riffin intends to make separate offers for each portion identified in paragraph 9 above, subject to the condition that Riffin will not offer to purchase any portion not connected to a portion that connects to MP 0.0.

10. Riffin would note that it does not appear that the Applicant served a copy of its Abandonment Application upon the PA Department of Environmental Protection, Stormwater Section. This may explain why comments were not received from this PA agency in this proceeding.

11. WHEREFORE, Riffin petitions the STB to (A) toll the time period within which **Riffin** (and only Riffin) must file his OFA, to a date which is ten days after Riffin **receives** the above referenced information; (B) order the SRC to provide to the STB and to Riffin, an estimate of the cost of complying with Pennsylvania's regulations.

11. Since the Estate has patiently waited a considerable period of time, Riffin would further ask that the STB order the SRC to provide the above information to the STB and to Riffin **within 60 days**.

Respectfully submitted,


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2012, a copy of the foregoing Petition to Toll Time to File an Offer of Financial Assistance, was served by first class mail, postage prepaid, upon Alex Snyder, Barley Snyder, P.O. Box 15012, York, PA 17405-7012 and upon Keith G. O'Brien. Baker and Miller, Ste 300, 2401 Pennsylvania Ave. Washington, DC 20037.


James Riffin